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NO. _____

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

ROBERT L. GUMM, d/b/a DESERT-AIRE MOBILE HOME STYLING AND SALES, INC. AND BOB'S MOBILE HOME SALES,
Petitioner,

against

J. O. TURNER AND FERN LOUISE TURNER,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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QUESTIONS PRESENTED

1. Whether the court below erred in awarding a "double recovery," once under federal disclosure laws and once under state disclosure laws, for essentially the same wrongful conduct.

2. Whether the court below erred in refusing to give validity to the choice-of-law provision agreed to by Plaintiffs.

3. Whether the court below erred in imposing liability on Defendant as a creditor, as defined by 15 U.S.C. § 1602(f) and 12 C.F.R. § 226.2(s), without a proper finding that the Defendant was a creditor with respect to the specific transaction under consideration.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

To The Honorable, The Chief Justice of the United States and the Associate Justices of the United States Supreme Court.

Petitioner, Robert L. Gumm, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit in *J. O. Turner v. Robert L. Gumm,* 685 F.2d 1384, entered August 27, 1982, with rehearing denied on September 30, 1982.

OPINIONS BELOW

The judgment and opinion of the Court of Appeals for the Fifth Circuit, reported without opinion at 685 F.2d 1384 (1982), is set forth in Appendix A, *infra*. The judgment of the District Court for the Western District of Texas is set forth in Appendix B, *infra*. The Findings of Fact and Conclusions of Law of the District Court for the Western District of Texas is set forth in Appendix C, *infra*.

JURISDICTION

The judgment sought to be reviewed was entered on August 27, 1982. Appellant's Petition for rehearing was denied on September 30, 1982. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTES INVOLVED

The statutes involved are the "Truth in Lending Act," 15 U.S.C. §§ 1601-1646, which although subsequently amended, provided in relevant part:

§ 1602(f).

> The term "creditor" refers only to creditors who regularly extend, or arrange for the extension of, credit which is payable by agreement in more than four installments or for which the payment of a finance charge is or may be required, whether in connection with loans, sales of property or services, or otherwise.

§ 1640(a).

> Except as otherwise provided in this section, any creditor who fails to comply with any requirement imposed under this part or part D or E of this sub-

chapter with respect to any person is liable to such person in an amount equal to the sum of—

(1) any actual damage sustained by such person as a result of the failure;

(2) (A) (i) in the case of the individual action twice the amount of any finance charge in connection with the transaction, or (ii) in the case of an individual action relating to a consumer lease under part E of this subchapter, 25 per centum of the total amount of monthly payments under the lease, except that the liability under this subparagraph shall not be less than $100 nor greater than $1,000; or

(B) in the case of a class action, such amount as the court may allow, except that as to each member of the class no minimum recovery shall be applicable, and the total recovery in such action shall not be more than the lesser of $500,000 or 1 per centum of the net worth of the creditor; and

(3) in the case of any successful action to enforce the foregoing liability, the costs of the action, together with a reasonable attorney's fee as determined by the court.

The "Texas Consumer Credit Code," TEX. REV. CIV. STAT. ANN. Art. 5069-1.01 to 8.05, which although subsequently amended, provided in relevant part:

Art. 5069-8.01.

Any person who violates this Subtitle by contracting for, charging or receiving interest, time price differential or other charges which are greater than the amount authorized by this Subtitle, or by failing to perform any duty specifically imposed on him by any provision of this Subtitle, shall forfeit to the

> obligor twice the amount of interest or time price differential and default and deferment charges contracted for, charged or received, and reasonable attorney's fees fixed by the court, provided that there shall be no penalty for a violation which results from an accidental and bona fide error.

All subsequent references to either the Truth in Lending Law or the Texas Consumer Credit Code are the 1974 text, unless otherwise indicated.

STATEMENT OF THE CASE

On October 31, 1975, J. O. and Louise Turner, Respondents (hereinafter "Plaintiffs"), brought this claim aganist Petitioner, Robert L. Gumm, an individual doing business under the trade name of Bob's Mobile Home Sales and Desert-Aire Mobile Home Styling and Sales, Inc. (hereinafter "Defendant"), under the federal Truth in Lending Act, 15 U.S.C. §§ 1601-1646, and the Texas Consumer Credit Code, Art. 5069-1.01-8.05, TEX. REV. CIV. STAT. ANN. Jurisdiction was based upon 28 U.S.C. § 1337, with respect to the federal claim and upon the doctrine of pendent jurisdiction with respect to the state claim. Plaintiffs, residents of Texas residing close to the New Mexico border, alleged that the contract, entered into by Plaintiffs with Security National Bank of Roswell, New Mexico (hereinafter "Bank"), violated Texas and federal disclosure laws. Plaintiffs sought damages and attorney's fees under both Texas and federal law.

After many preliminary motions and hearings not directly relevant to this petition, a trial to the court was held on February 26, 1981. The following evidence was presented and incorporated into the district court's "Findings of Fact." Appendix C, *infra*.

On or about August 30, 1974, Plaintiffs and Defendant contracted for the sale of a mobile home. The parties signed a retail installment contract, prepared by Defendant. This agreement, which was not challenged by Plaintiffs, provided that the Defendant would sell Plaintiffs a mobile home for $13,520.00. Financing was to be arranged separately.

Based on this contract and prior to the Plaintiffs' obtaining financing, Defendant delivered the mobile home to the Plaintiffs.

After delivery, Mutual Savings of Las Cruces, New Mexico, the expected financier, backed out of the loan. Seeking alternative financing, Plaintiffs negotiated with Mr. Bob King of Delta Corporation to secure alternative financing. Delta Corporation arranged a loan for Plaintiffs with Bank. Defendant did not participate in any of the financing negotiations. Although Defendant had an agreement with Delta whereby Delta would pay a fee to Defendant in connection with loans originated by Defendant, this agreement had apparently been repudiated because no fee was in fact received as a result of Plaintiffs' agreement with Bank. Delta Corporation's Mr. King arranged the financing, and he and Bank prepared the documents. Delta Corporation procured Plaintiffs' signature on the agreement with Bank in Texas; Bank then accepted and signed the agreement in Roswell, New Mexico. As part of the agreement, Plaintiffs signed a blank retail installment sales contract listing Defendant as seller. The agreement between Bank and Plaintiffs provided in relevant part: "This Contract shall be governed by the laws of the State of New Mexico." It is this contract which is the subject of this action and which Plaintiffs assert violates federal and Texas disclosure laws.

At the request of Bank, Defendant "assigned" this contract to Bank in return for a check to Defendant in the full amount of the purchase price. This check listed Plaintiffs as "remitter." Defendant's only involvement with the transaction between Plaintiffs and Bank occurred after Plaintiffs had completed their agreement with Bank, many weeks after Plaintiffs and Defendant had completed their transaction and after the mobile home already had been delivered. Defendant's "assignment" of the retail installment contract, signed by Plaintiffs, was a formality necessary to consummate Bank's loan to Plaintiffs.

At trial, the district court found that the retail installment contract signed by Plaintiffs at the request of Delta Corporation and "assigned" by Defendant to Bank in return for financing by Bank was subject to the Federal Truth in Lending Act. Despite the contractual choice-of-law provisions and the parties' significant contacts with New Mexico, the court also found the agreement subject to Texas law. Further, although the loan agreement was between Plaintiff and Bank, the court considered Defendant a creditor for purposes of Truth in Lending because he "arranged for the extension of credit." 15 U.S.C. § 1602(f) and 12 C.F.R. § 226.2(s) (1982); Appendix C, *infra*, at p. C-5. Finding that the retail installment contract did not comply with the disclosure requirements of state and federal law, the court awarded Plaintiffs damages in the amount of $1,000 under federal law and $16,203.68 under state law. Damages were assessed in accordance with the applicable state and federal provisions which measured damages as twice the finance charge. Appendix C, *infra*, at p. C-8. Federal law, however, limited damages to a maximum of $1,000 whereas Texas law awarded damages of twice the finance charge without

any ceiling. The district court also awarded Plaintiff $9,360 in attorneys' fees under both federal and state law. Appendix C, *infra*, at p. C-9.

The Fifth Circuit affirmed the trial court and found Defendant to be a creditor, based on the participation agreement with Delta Corporation and its belief, unsupported by the evidence, that Defendant received a fee in connection with the assignment. Appendix A, *infra*, at p. A-4; Appendix C, *infra*, at p. C-3. Further, relying on *Smith v. Chapman*, 614 F.2d 968, 977-78 (5th Cir. 1980), the appellate court found that a double recovery under state and federal disclosure laws was permissible. Appendix A, *infra*, at p. A-8. The Fifth Circuit rendered no opinion on whether the parties' choice-of-law provision should have been recognized.

REASONS FOR GRANTING THE WRIT

I. THE AWARD OF A "DOUBLE RECOVERY," DAMAGES UNDER BOTH FEDERAL CONSUMER PROTECTION LAWS AND STATE CONSUMER PROTECTION LAWS, FOR A SINGLE ACT OF MISCONDUCT IS INCONSISTENT WITH LEGISLATIVE INTENT AND UNNECESSARILY PUNITIVE, AND PRESENTS AN IMPORTANT FEDERAL QUESTION WITH SIGNIFICANT IMPACT ON THE EXTENSION OF CREDIT.

Since the late 1960s, Congress and state legislatures have enacted numerous laws designed to offer increased protection to consumers. Unfortunately, Congress and the many states have often acted independently. Consequently, a duplicity of consumer protection enactments

is not uncommon, and while the goal of ensuring adequate protection to consumers is admirable, this case demonstrates the hardships and inequities that can arise when both state and federal laws are applied to the same wrong to permit a "double recovery."

The Federal Truth in Lending Act, 15 U.S.C. §§ 1601-1646 (1976), requires that creditors make certain disclosures to consumers before a final decision regarding the purchase of credit is made. "It is the purpose of this subchapter [Truth in Lending] to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uniformed use of credit. . . ." 15 U.S.C. § 1601, *see also Mourning v. Family Publications Service, Inc.*, 411 U.S. 356, 364-65 (1973). To encourage private enforcement of the law and provide adequate remedies to aggrieved consumers, Truth in Lending permits a successful plaintiff to recover, *in addition* to any actual damages, twice the amount of the finance charge except that this additional recovery may not be less than $100 nor greater than $1,000, 15 U.S.C. § 1640(a)(2), plus attorney's fees, 15 U.S.C. § 1640(a)(3). *See Williams v. Public Finance Corp.*, 598 F.2d 349 (5th Cir. 1979), reh'g denied, 609 F.2d 1179 (5th Cir. 1980). This liberal recovery is designed to compensate borrowers for injuries caused by misleading disclosures, to provide "civil penalties" sufficient to promote private litigation, and to serve as a deterrent. *Murphy v. Household Finance Corp.*, 560 F.2d 206 (6th Cir. 1977); *Sellers v. Wollman*, 510 F.2d 119 (5th Cir. 1975); *In re Dunne*, 407 F. Supp. 308 (D. R.I. 1976); *Jones v. Seldon's Furniture Warehouse, Inc.*, 357 F. Supp. 886 (E.D. Va. 1973); *Shields v. First National Bank of Arizona*, 56 F.R.D. 442 (D. Ariz. 1972).

At approximately the same time Congress was considering the Truth in Lending Act the State of Texas enacted its Consumer Credit Code. An essential part of this law is the chapters dealing with Retail Installment Sales, specifically Texas Revised Civil Statutes Annotated, Articles 5069-6.02 to 6.05 (1971). These provisions set forth specific disclosure requirements and list various prohibited practices. The state law goes beyond the Truth in Lending Law by requiring disclosure as well as mandating the inclusion of certain provisions. At the time of the action in the instant case a person who violated the Texas Consumer Credit Code was liable to the consumer for twice the amount of the interest or the time-price differential, plus reasonable attorney's fees. TEX. REV. CIV. STAT. ANN. Art. 5069-8.01.

Because of the similarity between the Truth in Lending Law and the Texas Consumer Credit Code, a creditor who violates one will often, by the same conduct, violate the other. For example, a creditor who makes no disclosures would be liable for a "double recovery" under both statutes. In granting Plaintiffs such a double recovery, the Fifth Circuit in the instant case directly addressed this question, stating: "We have held that such a dual recovery is permissible, *Smith v. Chapman*, 614 F.2d 968, 977-78 (5th Cir. 1980). . . ." Appendix A, *infra*, at p. A-8.

The Fifth Circuit in *Chapman* did not so hold. In *Chapman*, the court, while permitting a double recovery, stated: "The propriety of the imposition of the double finance charge penalty twice, once for the federal and once for the state violation, was not raised by the Appellants, and we do not pass on it here." 614 F.2d at 971 n.2. The courts, in considering the propriety of such

a double recovery, are divided. For example, in *Northwest Bank and Trust Co. v. Gutshall,* the Iowa Supreme Court refused to permit a double recovery for a violation of the Truth in Lending Act and the Iowa Consumer Credit Code. 274 N.W.2d 713, 721 (Iowa 1979). As the court noted in *Ninth Liberty Loan Corp. v. Hardy,* 53 Ill. App. 3d 601, 368 N.E.2d 971, 975 (1977): "[W]e regard the remedies afforded by the two Acts as duplicitous, not cumulative." In *Cantrell v. First National Bank of Euless,* 560 S.W.2d 721, 729 (Tex. Civ. App. 1977, writ ref'd n.r.e.), the court permitted a double recovery, doubting, however, "that provision for imposition of penalties by both the federal and state laws were intended by either the Congress or Texas Legislature. . . ." This Court must undertake the task of determining congressional intent.

Defendant recognizes that the Texas Legislature has eliminated the possibility of a double recovery under both the Truth in Lending Law and the Texas Consumer Credit Code through the amendment of Article 5069-8.01. Subsection (h) of this section now provides that liability under the Texas Consumer Credit Code is "in lieu of and not in addition to . . . liability under the Federal Consumer Credit Protection Act. . . ." TEX. REV. CIV. STAT. ANN. Art. 5069-8.01(h) (Vernon Supp. 1982). However, this amendment does not apply to protect the Defendant from the inequities of prior law. Further, other Texas statutes designed to protect consumers still permit duplicitous recovery when applied with federal law. *See, e.g.,* Texas Debt Collection Act. TEX. REV. CIV. STAT. ANN. Art. 5069-11.01 *et seq.* (Vernon Supp. 1982) and Fair Debt Collection Practices Act, 15 U.S.C. § 1692(a)-(o) (Supp. IV 1980). Numerous other states also have statutes which give rise to the possibility of a double recovery because of the overlap of federal and state law. *See, e.g.,*

COLO. REV. STAT. § 5-5-203(1)(a) (1973) (credit disclosure law); D.C. CODE ANN. § 28-3813(d)(1) (1981) (credit disclosure law); HAWAII REV. STAT. § 476-22 (1976) (debt collection); IND. CODE ANN., § 24-4.5-5-203(1)(a) (Burns 1982) (credit disclosure); IOWA CODE ANN. §§ 537.7101, 537.5201(1)(y) (West Supp. 1982) (debt collection); KAN. STAT. ANN. § 16a-5-201(1) (1974) (debt collection); ME. REV. STAT. ANN. tit. 9-A, § 8-208 (Supp. 1982) (credit disclosure law); WYO. STAT. ANN. § 40-14-522 (1977) (credit disclosure).

Several states have resolved legislatively some instances of "double recovery." *See, e.g.*, TEX. REV. CIV. STAT. ANN. Art. 5069-8.01(h) (Vernon Supp. 1982); IOWA CODE ANN. § 537.5203(8) (West Supp. 1982). In most cases, however, it is left to the various state and federal courts to resolve this issue of federal statutory interpretation. This Court should issue a writ of certiorari not only to resolve the split among the courts considering the relationship between federal and state law with regard to consumer statutes, but also to ensure uniformity in the application of the Truth in Lending Law penalty.

II. THE FIFTH CIRCUIT ERRED BY NOT CONSIDERING WHETHER TO GIVE EFFECT TO THE CONTRACTED FOR CHOICE-OF-LAW PROVISION, DESIGNATING NEW MEXICO LAW AS CONTROLLING, AND THE DISTRICT COURT ERRED BY REFUSING TO GIVE EFFECT TO THE CHOICE-OF-LAW PROVISION BASED ON "WHERE THE CONTRACT WAS ENTERED INTO" INSTEAD OF WHERE THE CONTRACT WAS MADE.

In the United States, the general rule applied to an express choice-of-law provision made for the purpose of

controlling disputes arising out of a contract is that such a provision *will be enforced* if the contract and the transaction of which it is part bear a "reasonable relationship" to the jurisdiction whose law is chosen. *See generally* RESTATEMENT (SECOND) ON THE CONFLICT OF LAWS § 187 (1971); Weintraub, COMMENTARY ON THE CONFLICT OF LAWS, § 7.3C (2d ed. 1980). In the instant case Plaintiffs entered into two contractual agreements. The first, entered into between Plaintiffs and Defendant, in Texas, was for the sale of the mobile home. The second, entered into between Plaintiffs and Bank, was for the financing of the mobile home. The Plaintiffs based their cause of action on documents arising out of the second transaction which was between Plaintiffs, both Texas residents, and Bank, a New Mexico resident. Although Delta Corporation, a Texas intermediary, arranged the contract, Bank consummated the contract in New Mexico. Payments were made in New Mexico, and upon default the mobile home was repossessed and brought to New Mexico.

The district court held that the transaction was subject to Texas law because the contract was "entered into" in Texas. Appendix C, *infra,* at p. C-4. The court erred in two important respects. First, it did not distinguish between the contract of sale and the contract of financing. Second, the court mistakenly held that the *contract* was entered into in Texas. A contract does not exist until there is an offer and acceptance. A contract, therefore, is "entered into" at the place of its making. General contract law has long recognized that the place of a contract's making is the geographical location where the acceptance of the offer to contract became effective. *See, e.g., Don J. Cummings Co., Inc. v. Aluminum Manufacturing Co., Corp.,* 371 F.2d 118 (10th Cir. 1967); *Woodman v.*

Bishop, 203 S.W.2d 977 (Tex. Civ. App. 1947, no writ); Weintraub, COMMENTARY ON THE CONFLICT OF LAWS, § 7.3A (2d ed. 1980). In the instant case, the contract at issue is the one for financing, and this was made in New Mexico. The Fifth Circuit and the courts of Texas have recognized that a contractual choice-of-law agreement, such as the one in the contract arising out of the New Mexico financing of the mobile home, should be given validity so long as a reasonable relationship exists between the transaction and the law selected. *See, e.g., Woods-Tucker Leasing Corp. of Georgia v. Hutcheson-Ingram Development Co.*, 642 F.2d 744 (5th Cir. 1981); *Teas v. Kimball*, 257 F.2d 817 (5th Cir. 1958); *Dowling v. NADW Marketing, Inc.*, 578 S.W.2d 475 (Tex. Civ. App. 1979, writ ref'd n.r.e.); *Securities Investment Co. v. Finance Acceptance Corp.*, 474 S.W.2d 261 (Tex. Civ. App. 1971, writ ref'd n.r.e.). The transaction between Bank, a New Mexico resident, and Plaintiffs, clearly bears more than a "reasonable relationship" to New Mexico.

The district court's failure to fully perceive the true relationship of the parties to this transaction serves to contravene the correct application of federal and state consumer protection laws. Such laws provide broad inclusive definitions of the term "creditor," including, for example, "arrangers," to ensure that consumers will be afforded adequate means of redress. The broad definitions of the Truth in Lending Law, however, should not determine the situs of a contract. The district court's analysis of the instant transaction ignores reality. At issue in this case is a loan agreement between Plaintiffs and a New Mexico Bank with payment and finalization both to occur in New Mexico. Defendant's alleged liability as a creditor is based on a statutory definition which makes

him liable as an arranger when in fact he was not a party to the financing contract. Admitting liability under the Truth in Lending Law for purposes of argument only, such liability should not be the basis for additional contractual or state statutory liability premised upon a contract which clearly provides governance by New Mexico law. The district court's error in applying Texas law to this transaction has caused Defendant grievous financial harm and if followed by other courts could severely impair commercial transactions, particularly in border communities.

III. THE ANALYSIS EMPLOYED BY THE COURTS BELOW TO IMPOSE LIABILITY ON DEFENDANT AS A CREDITOR UNDER THE TRUTH IN LENDING LAW IS INCORRECT, AND THIS COURT'S GUIDANCE IS REQUIRED TO ENSURE THAT SUBSEQUENT DECISIONS DO NOT SIMILARLY ERR IN THE APPLICATION OF AN IMPORTANT FEDERAL STATUTE.

The Truth in Lending Law imposes a general requirement of disclosure which states that "each creditor shall disclose clearly and conspicuously, in accordance with the regulations of the Board, to each person to whom consumer credit is extended the information required under this part or part D of this subchapter." 15 U.S.C. § 1631 (a). A creditor who violates the provisions of the Truth in Lending Law or its regulations (Regulation Z, 12 C.F.R. § 226.1 *et seq.*) is liable for actual damages plus a penalty of twice the finance charge, but the recovery cannot be less than $100 nor greater than $1,000. 15 U.S.C. § 1640.

To ensure compliance with the law, prevent its circumvention, and provide a convenient Defendant, Truth in

Lending adopts a very broad definition of creditor. At the time of this action creditor was defined as any person who "regularly extends or arranges for the extension of consumer credit. . . ." 12 C.F.R. § 226.2(s).

The Fifth Circuit imposed liability upon Defendant under the Truth in Lending Law because it found that Defendant "regularly extends . . . consumer credit. . . ." Appendix A, *infra*, at p. A-8.

The district court also found Defendant to be a creditor; however, that court focused on the fact that "he regularly arranged for the extension of credit. . . ." Appendix C, *infra*, at p. C-5. Assuming that both of these conclusions are correct, as general statements of fact, the imposition of liability is still improper because specific consideration was not given to whether Defendant was a creditor for purposes of the agreement out of which the alleged Truth in Lending Law violations occurred. Liability under the Truth in Lending Law must be premised upon one's involvement in a specific transaction, not an individual's general status as a creditor. As the Statement of Facts indicates, pages 5 to 6, *supra*, Defendant's involvement with the lending transaction out of which this case arises was at best ministerial. The purposes of the Truth in Lending Law are in no way furthered by the imposition of a statutory penalty upon an uninvolved party. Contrary to the Fifth Circuit's suggestion, merely being a creditor is not sufficient grounds for the imposition of Truth in Lending penalties. The Truth in Lending Law requires that a person be a creditor with respect to the transaction in issue. Defendant clearly was not a creditor with respect to the transaction complained of by Plaintiffs. Defendant was the seller; Bank was the creditor. Liability, therefore,

can only be imposed on Defendant if he was an "arranger" of the credit granted by Bank to Plaintiffs.

To be an arranger of credit a person must provide or offer to provide consumer credit and either receive a fee for such service or participate in the preparation of the contract documents. 12 C.F.R. § 226.2(h). Defendant did not participate in the preparation of the documents nor did he receive a fee. Appendix C, *infra,* at p. C-3. Defendant did have a participation agreement with Delta Corporation whereby Defendant would receive a fee for loans arranged by Delta with various lenders. The question, then, is: Should the mere existence of the participation agreement between a seller and an arranger of credit be a sufficient basis for imposing liability under the Truth in Lending Law?

In considering whether a person is a creditor, the courts have made it clear that a seller's merely benefiting from the extension of credit is not enough to hold him liable as an arranger. *Gerasta v. Hibernia National Bank,* 411 F. Supp. 176, 186 (E.D. La. 1976), *rev'd on other grounds,* 575 F.2d 580 (5th Cir. 1978). Either a close relationship between the lender and the seller or the payment of a fee is necessary for liability. *See, e.g., Meyers v. Clearview Dodge Sales, Inc.,* 539 F.2d 511 (5th Cir. 1976), *cert. denied,* 431 U.S. 929 (1977); *Price v. Franklin Investment Co., Inc.,* 574 F.2d 594 (D.C. Cir. 1978). Where the seller is a mere "conduit" to the transaction, liability should not be imposed. *Ford Motor Credit Co. v. Spann,* 153 Ga. App. 535, 265 S.E.2d 863 (Ga. Ct. App. 1980).

In the instant case Defendant had no relationship with the Bank. He had consummated the sale with Plaintiff

and delivered the mobile home prior to any involvement by the Bank. His only contact with the Bank was a ministerial assignment of a retail installment contract drawn up by the lender and naming Defendant as a seller. The arranger of the credit in this case was Delta Corporation. At most, Defendant can only be said to be an arranger of the arranger.

The courts below have interpreted the Truth in Lending Law as not requiring a close scrutiny of the transaction at issue to determine Defendant's status. This is a misapplication of federal law and inconsistent with the purpose of the Truth in Lending Law. Truth in Lending is designed to permit a consumer "to compare more readily the various credit terms available to him and avoid the uninformed use of credit. . . ." 15 U.S.C. § 1601 (1976). The imposition of liability on Defendant in no way accomplishes this objective.

Defendant was not a creditor in this transaction. He did not set the terms of the agreement nor did he receive the periodic payments. Defendant's participation in the transaction was so far removed from the final agreement that he cannot be considered an arranger of this transaction. It is impracticable and unrealistic to impose disclosure requirements on the Defendant. His participation could be classified as that of an initiator, but no more.

This Court must consider this important issue of federal statutory interpretation to ensure that other courts do not so err. It is important to note that the relevancy of this Court's involvement is in no way diminished by the many recent amendments to Truth in Lending.

CONCLUSION

For the reasons stated above, the Petition for a Writ of Certiorari should be granted.

Dated: Houston, Texas

December , 1982

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit was served upon Michael Crowley, 1808 State National Plaza, El Paso, Texas 79901, by United States certified mail, return receipt requested, postage prepaid, on this _____ day of December 1982.

JAMES F. SCHERR